

In fact, in Applicants' response of July 3, 2007 (responsive to the May 3, 2007 Requirement), Applicants elected, with traverse, atopic dermatitis as a skin condition and the topical route of administration. The Examiner, in the Office Action dated April 3, 2008, even found Applicants' traversal over the Requirement for Election persuasive and withdrew the Requirement. And, in Applicants' response dated December 10, 2008 (responsive to the Requirement mailed on November 10, 2008), Applicants again elected, with traverse, atopic dermatitis as a skin condition.

Applicants do not understand why the Patent Office is revisiting these issues especially since they are being considered for the third time. Applicants submit that the Requirement for Election of Species should be withdrawn. Aside from already electing these species (or having them withdrawn as indicated in the April 3, 2008 mailing), the election requested in the present Office Action will only cause piecemeal prosecution of this application which is unfair to the Applicants, and unnecessary and unreasonable under the Patent Office rules. Moreover, Applicants have already expended significant amounts of time, effort (including several telephone discussions with the Examiner in relation to this very issue), and money in responding to these issues previously, not to mention, significantly restricting the scope of the pending claims in order to facilitate prosecution of this case on the merits (See Resp. September 1, 2005; Resp. July 3, 2007; and Resp. December 10, 2008).

If the Requirement for Election of Species is not withdrawn, Applicants will be forced to appeal.

Of course, Applicants understand that a complete reply requires an election of species to be examined. Applicants do so only with traverse.

In response to the Requirement for Election of Species, Applicants hereby elect atopic dermatitis as the skin condition of claims 61 and 91 and the topical route of administration of claim 76. The election of atopic dermatitis reads on claims 61, 62, 70-72, 76-77, 84, 85, and 91. The election of the topical route of administration reads on claim 76.

With respect to the skin condition, Applicants respectfully submit that the conditions listed in the claims are all skin conditions of the epidermis, or the outer layer of the skin. Consequently, Applicants respectfully submit that these skin conditions are not characterized by divergently different clinical manifestations, etc., as alleged by the Examiner. The skin conditions are clearly related, and a search for the list of skin conditions should be co-extensive. Thus, no additional burden is created on the Patent Office by searching both of these allegedly distinct species together. Moreover, Applicants have already elected this species (see, e.g. the response dated December 10, 2008).

With respect to the mode of administration, Applicants respectfully submit that the routes of administration listed in the claims are all typical methods of administration of any composition or therapeutic agent. These routes of administration are not separated in the art by their mode of absorption or action within the body. A search for the listed routes of administration should be co-extensive. Thus, no additional burden is created on the Patent Office by searching these allegedly distinct species together.

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For all of the foregoing reasons, reconsideration of the species elections requirements and examination of all the species are respectfully requested and considered to be appropriate in this case.

In the event any fee is due in connection with the present response, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

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